APPEAL NO. 93312

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on March 22, 1993, (Hearing officer) presiding as hearing officer. She determined that the appellant (claimant) failed to establish that he sustained a compensable injury while in the course and scope of his employment. Claimant appeals urging that he has met his burden of proof and that the hearing officer must have applied a higher standard of proof than is required. Respondent (carrier) argues that the hearing officer's findings and conclusions are not against the great weight and preponderance of the evidence and asks that the decision be affirmed.

DECISION

Determining that there is sufficient evidence to support the hearing officer's decision and that her findings and conclusions are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, the decision is affirmed.

The only issue in the case was whether or not the claimant was injured in the course and scope of his employment. (The hearing officer correctly announced at the beginning of the hearing that the standard of proof was "by a preponderance of the evidence" and there is nothing to indicate any other standard was applied). The claim involved an unwitnessed slip and fall while claimant was working at a business concerned with vehicle oil changes and lubrications. The claimant testified that he had been employed with employer since September 4, 1992 and that on (date of injury), he slipped on some grease on a stairway and fell down three steps and hit his back. He initially indicated that one other employee was a witness to the fall and that he told his supervisor about falling. Although not entirely clear from the record, it appears the claimant missed work sometimes and reported late for work on occasion because of other unrelated problems. In any event, he continued in the employ of the employer until around September 25th, when he was terminated (it is not certain from the record whether it was a self termination or if invoked by the employer) for failure to come to work. He went to an emergency room of a hospital on October 6, 1992, because of his back pain and was diagnosed with acute contusion and muscular spasm in the low back. He stated he did not go to a doctor earlier because he did not know how to pay for it (the medical records indicate he had been to the same hospital emergency room several months earlier on another matter). He also stated that a couple of days after the incident his back was bothering him and he was trying to relax it in bed and that he had his girlfriend call to tell the employer he would not be in.

An employer manager testified that the first she was aware of any claimed injury was about the 25th of September, after the claimant was terminated. She stated that prior to the claimant's last day of work no one noticed any manifestations of an injury. A statement prepared after the employer was aware of the claimed injury and signed by three coworkers, including the supervisor to whom the claimant asserted he told of his injury at the time, was

admitted into evidence. The manager stated that the claimant was still in training at the time of the alleged accident, that he was still being closely watched and that the working area was small. The statement indicates that none of the employees were aware of the claimant slipping and falling and that claimant had not told anyone that he had slipped and fallen. The coworker who the claimant stated was a witness, denied that he observed the claimant slip and fall although he himself had slipped and fallen on the steps one time.

Credibility was obviously a key factor in the resolution of this case, and it is apparent that the hearing officer did not give great credence to at least parts of the claimant's testimony. The hearing officer is the sole judge of the weight and credibility of the evidence (Article 8308-6.34(e)), and where there are conflicts and inconsistencies in the testimony and the other evidence, it is for the hearing officer, as fact finder, to resolve them (Garza v. Commercial Insurance Co. of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ) and make factual findings in the case. Article 8308-6.34(g). The testimony of a claimant, an interested party in a case, does no more than raise a factual issue. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.- Amarillo 1973, no writ). Although evidence in a given case may give rise to different inferences, or even if it is possible for a reviewing level to reach a different conclusion based upon the same evidence, such does not form a sound basis or provide other justification to substitute the reviewing body's judgment for that of the fact finder. *See* Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). Only were we to find, which we do not here, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, would there be a sound basis for disturbing the decision. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Accordingly, the decision is affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Lynda H. Nesenholtz
Appeals Judge

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Thomas A. Knapp
Appeals Judge